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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/428,918	04/25/1995	ROBERT R. REAVER	REAV-35008	5672

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EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
08/428,918

Applicant(s)  
REAVER et al.

Examiner  
KURT ROWAN

Art Unit  
3643



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 7-10, and 12-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9, 10, and 12-19 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7, 8, and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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*Reissue Applications*

*Response to Amendment*

1. The amendment filed 8/7/2001 is not in compliance with 37 CFR 1.173. A supplemental amendment should be filed. The following problems have been found:

Claim 1, next to last paragraph, "camp" should be --clamp--, words from the patented claim have been omitted. The omitted words must appear even if they are to be deleted.

Claim 5, line 2, "hosing" should be --housing--.

Claim 9, line 7, the "," should be underlined and in line 10, the ";" should not be underlined. On page 2, line 5, "tract" should be --track-- and should be underlined.

Claim 12, line 3, "aperture" should be --apertures-- and underlined.

Claim 13, line 2, "extend" should be --extent--, line 5, "tract" should be --track--. Also the words "closure member ....of the compartment" has been omitted from the patented claim but not bracketed.

Claim 14, line 7, "front end.... an insect trap" has been omitted from the patented claim but not bracketed. In line 11, "fo" should be --of--. On page 7, line 1, it is not clear if "two sides...wherein" is to be deleted.

Claim 16, line 2, "hosing" should be --housing--, in line 3, "tract" should be -- track--, page 8, line 1, "hosing" should be --housing--.

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Claim 17, line 13, "retraced" should be --retracted--, line 19, "tract" should be --track--, line 20, "positions" should be --position--.

Claim 18, --(amended)-- should be inserted after "18.". In line 3, "mesh" should be --[mesh]--.

Claim 19, line 2, "tract" should be --track--.

Claim 20 must be totally underlined. Claims 5 and 7 must be totally lined through.

2. Claims 1-3, 5, 7-8 and 20 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

Applicant incorporated dependent claims into independent claims to make them allowable. Now applicant is attempting to broaden some claims by deleting some of the limitations that were

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added to the independent claims to make them allowable. This is impermissible recapture of surrendered subject matter. In both claims 1 and 20 include limitations directed to "...rearslide clamp means on the rear end portion of the closure member through which the handle slidably extends...." This clause is broader than that which appeared in patented claim 1. The amended reissue claim also omits the "central notch" limitation from claim 5 of the original application. Applicant argues in the most recent amendment that "applicant's believe<sup>11</sup> that it was the addition of the "rear slide clamp" (originally in dependent claim 5) which rendered independent claim 1 allowable. There was no discussion in the Office Actions that resulted in this claim amendment which indicated that the "central notch" has a distinguishing feature (amendment E, page 12). Recapture is based on the written record not what applicants believes. The facts are that claim 5 was objected to and applicants incorporated all of the limitations into claim 1 which was subsequently allowed. Applicants made no mention of their "belief" in the amendment in which claim 5 was incorporated into claim 1. So the written record does not support the broadening that applicants are attempting in the reissue. To overcome this rejection, claims 1 and 20 should be amended to include all of the limitations of original claim 5 as was done in the original application except that "mesh" can be deleted.

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*Allowable Subject Matter*

3. Claims 9-10, 12-19 are allowed.

4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KURT ROWAN whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



KURT ROWAN

PRIMARY EXAMINER

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November 19, 2002